# In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1214

OTTO BURGDORF,
*Petitioner,*

vs.

BOARD OF TRUSTEES OF WOODLAND JOINT UNIFIED SCHOOL DISTRICT AND STADIUM BOOSTERS CLUB OF WOODLAND, INC.
*Respondents.*

## PETITION FOR WRIT OF CERTIORARI

OTTO BURGDORF
Route 2, Box 680
Woodland, California
*In Prop. Persona, Petitioner*

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## TABLE OF AUTHORITIES

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## PETITION FOR WRIT OF CERTIORARI

This petition is entered pursuant to United States Code, Title 28, Sections 1654 and 2101 and Rule 19(b) of the Revised Rules of the Supreme Court of the United States.

The grounds upon which the jurisdiction of the United States Supreme Court is based are the 5th and 14th amendments of the United States Constitution which are violated by a decision of the Superior Court in and for the County of Yolo, State of California

(No. 32034). This said decision was affirmed by the Third Appellate District Court of the State of California (Civil 15458). A petition for a hearing of this case directed to the California Supreme Court was denied by this latter court. The order denying this petition for hearing was filed on June 24, 1976.

Jurisdiction of the United States Supreme Court to review the judgment in question by a writ of certiorari is based on 28 USC. Section 1257.

The basis for this legal action is a so-called lease-purchase agreement by respondents, according to which the school district by annual payments, which are called rent, reimburses the Boosters Club for its original expenditure which was caused by the erection of bleachers and other structures.

The legal grounds on which this action was brought was violation of:

1. The "due process of law clause" of the 14th amendment of the United States Constitution.

2. The legal grounds contained in the California Constitution.

The Yolo County Superior Court sustained a demurrer which was interposed by the County Counsel and based on the contention that the obligation contracted by said school district does not constitute a liability for which Article XIII, Section 40 of the California Constitution demands the approval of two thirds of the electorate of said school district.

Said lease states specifically that the school district leases the stadium for two terms, each extending over a period of Three years.



The exact wording in the agreement between the respondents in this matter is:

> "4. RENTAL. District agrees to pay to Lessor an annual rental for the use of the premises and improvements in the sum of $15,000 per year for the first year of the term and in the amount of $24,000 per year thereafter. Rent during the first renewal term shall be in the amount of $29,000 for the first year thereof and in the amount of $29,000 per year thereafter and during any additional renewal terms . . . "

This paragraph 4 contains the clause:

> "The rent payable within the term or renewable terms of said lease shall become due only in consideration of the right to possess occupy, occupy and use the premises and improvements during that year."

This clause was cited by defendant as reason that no voter approval was needed for entering the financial obligation, for, so it was claimed, the district was bound for one year only.

But this statement is not in agreement with paragraph 3, Improvement Lease, which reads as follows:

> "Lessor hereby leases to District hereby rents from the Lessor the improvements and portions of the site upon which said improvements will be located. The term of this Lease shall only commence . . . and shall continue for a period of three (3) years thereafter. At the expiration of this term, the District shall have the exclusive option to renew this Lease for an additional period not to exceed three years, and may continue to exercise successive options to renew for periods not to exceed three years . . . "

Respondent has cited court decisions as basis for justification of disregarding Article XIII, Section 40 of the California Constitution. Appellant has emphasized at the hearing before the Yolo County Superior Court that court opinions are not valid bases for court decisions. In this respect Appellant stated, and quoting verbatim from Reporter's Transcript:

> THE COURT: "Well, the Board of Trustees have submitted the demurrer on their points and authorities. Counsel is not making an oral statement at this time. If you wish to respond, respond to the demurrer, you may do sc orally at this time or the court may grant you time to file a written memorandum in this matter, if you wish that."
>
> MR. BURGDORF: "No, no."
>
> THE COURT: "No what?"
>
> MR. BURGDORF: "I don't want to respond to the demurrer or to the points and authorities, because I do not consider judicial decisions as law. Judicial decisions are no basis, according to the law, according to my understanding. The constitutional provisions and the legislative provisions in the form of statutes, those two bases are basis of law, not judicial decisions. And I am on the side of Judge Burger of the United States Supreme Court, Chief Justice of the United States Supreme Court. He does not look at judicial decisions either."
>
> THE COURT: "I am not going to argue the point with you, Mr. Burgdorf. But it is interesting to note that in your complaint you cited judicial decisions as the basis of law."
>
> MR. BURGDORF: "No, no. I did not cite. I would like to make that clear. I did not base my argument on the Arizona decision."



> THE COURT: "Are you telling this court that that portion of your complaint is invalid, in fact, because it is based on judicial decision?"
>
> MR. BURGDROF: "It is not important. I have cited the Arizona case . . . "

The other part of the Complaint for Declatory Relief alludes to misuse of School funds. This is not an issue before the High Court.

The Yolo County Superior Court sustained the demurrer of County Counsel on the basis of Points and Authorities filed. These Points and Authorities had as sole bases court decisions, notably *City of Los Angeles* vs *Offner* (1942) 19 Cal. 2nd 483, 486, *County of Los Angeles* vs. *Byram* (1951) 36 Cal. 2nd 694, 700.

The Appellate Court affirmed the lower court decision citing the above-mentioned cases, and quoted:

> "Where a lease agreement is entered in good faith and creates no immediate indebtedness for the aggregate installment therein provided for but, on the contrary, confines liability to each installment as it falls due and each year's payment is for the consideration actually furnished for that year, no violation is done to the constitutional provision."

Appellant has not deemed it worthwhile his time to review the cited cases. But besides other considerations which render the said lease-purchase agreement illegal, the annual payments, which the school district obligated itself to make, are not for the use of the leased facilities but constitute installment payments on an incurred debt. Camouflaging these installment payments as rent does not cure the obvious legal defect of the agreement of the two contracting parties. Said

lease-purchase agreement of respondents obligated the said district to make payments beyond one year, which according to Article XIII, Section 40, California constitution requires voter approval, for this constitutional provision states clearly and expressly:

> "No county, city, town, township, board of education or school district shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two thirds of the qualified elector thereof . . . "

This legal action was brought by appellant partly against the misuse of taxpayers' money, which was collected ostensibly for educational purposes and extended for school and community recreational athletic activities. But this part of the action is not brought by appellant to the High Court for a decision, since no federal constitutional provision has been violated by the misuse of tax money. Nor is the main reason for a petition of review by the High Court the violation of Article XIII, Section 40 of the California Constitution. The principal reason for this petition is the very common practice by courts to disregard and circumvent clear and express constitutional and statutory provisions and to base their decisions upon "opinions" of other courts, though these opinions are in crass violations of constitutional and statutory provisions and often absurd. By doing so the courts violate the due process of law clause of the fifth amendment. There is profound need on the part of the United States Supreme Court to proclaim that it is not the pre-



rogative of judges to disregard applicable clear and explicit constitutional and/or statutory provisions and to base their decisions on their and/or other judges' whims.

It is for this reason that the petitioner ask the High Court very kindly to consider this case in spite of the fact that the justices of this court are overloaded with work. Attention is called in this matter to the last sentences of Section 1b of Rule 19 of the Supreme Court Rules, which read:

> "(b) Where a court of appeal . . . , or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

Appellant in his opening brief to the Appellate Court stated:

> "Plaintiff takes issue with the citation of decisions, which are a matter of personal opinions of the particular judge. But these opinions are not law and cannot judicially be used as bases for decisions. The provisions of the constitutions and the provisions of the statutory laws, if the latter are not in violation of the constitutions, are the sole legal bases for any matter for which their provisions apply."

Appellant further emphasized explicitly that:

> "Using court decisions, which are not based on constitutional and statutory laws, violates the due process clause of the United States constitution."

The Appellate Court "rejected plaintiff's contention that the lease violates Article XIII, Section 40, California Constitution," citing as basis for this decision the afore-mentioned cases of County Counsel, to wit: *City of Los Angeles* vs. *Offner* (1942) 19 Cal. 2nd 483, 486: *County of Los Angeles* vs. *Byram* (1951) 36 Cal. 2nd 694, 700.

This court also held that:

> "It requires no citation of Authority to reject Plaintiff's contention that decisional law is of no validity and the constitution and statutes constitute the only body of law."

In appellant's petition for a hearing before the California Supreme Court the violation of Article XIII, Section 40, California Constitution, due process of law clause of the XIV amendment of the United States Constitution and Article III, Section 3 of the California Constitution were cited. This latter section "prohibits the exercise by the person of one branch of government of powers which have not been granted to this branch."

Dated: November 1, 1976 at Sacramento, Califonria.

Respectfully submitted,

Otto Burgdorf
*In Prop. Persona,*
*Petitioner*

# APPENDIX

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COPY

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
IN AND FOR THE
THIRD APPELLATE DISTRICT
(Yolo)

OTTO BURGDORF
Plaintiff and Appellant

v.

BOARD OF TRUSTEES OF WOODLAND
JOINT UNIFIED SCHOOL DISTRICT
and STADIUM BOOSTERS CLUB OF
WOODLAND, INC., ETAL.
Defendants and Respondents

3 Civ. 15458
(Superior Ct. No. 32034)

BY THE COURT:

Plaintiff appeals from a judgment of dismissal entered after defendant's demurrer was sustained and plaintiff failed to amend.

Plaintiff brought a taxpayer's class action to have a certain lease agreement nullified and the school district enjoined from acting pursuant to it. The complaint alleged that defendants entered into a lease with option to purchase whereby the district leased school property to the Boosters Club in consideration of the club's erecting certain improvements on the land. The agreement also provided that the district would lease those improvements

for three years with option to renew and option to purchase the improvements. The agreement contained the provision that the rental for the use of the improvements payable within each year of the term of the lease shall become due only in consideration of the right to possess, occupy and use the premises and improvements during that year. The electorate did not approve the lease.

We reject plaintiff's contention that the lease violates the debt limitation imposed by article XIII, section 40, of the California Constitution, which was in effect at the time he filed his complaint. Where a lease agreement is "entered into in good faith and creates no immediate indebtedness for the aggregate installments therein provided for but, on the contrary, confines liability to each installment as it falls due and each year's payment is for the consideration actually furnished that year, no violence is done to the constitutional provision." (City of Los Angeles v. Offner (1942) 19 Cal. 2d 483, 486; County of Los Angeles v. Byram (1951) 36 Cal. 2d 694, 700.) We find no distinction between the instant lease and those upheld in the Offner and Byram cases. The complaint did not allege bad faith on the part of the parties to the agreement.

It requires no citation of authority to reject plaintiff's contention that decisional law is of no validity and the Constitution and statutes constitute the only authoritative body of law.

Plaintiff's contention that the district acted beyond its authority in expending funds for "non-educational" purposes is also without merit. His complaint merely alleged that the California Constitution does not empower a school district to spend money for purposes other than



education. The Legislature has expressly authorized the use of school district property for programs of community recreation, as in this case. (Ed. Code, § 16651, et seq.) Plaintiff's argument fails to recognize that " ' . . . our Constitution is not a grant of power but rather a limitation or restriction upon the powers of the Legislature [citations] and "that we do not look to the Constitution to determine whether the Legislature is authorized to do an act, but only to see if it is prohibited." [Citation.] If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action . . . .' " (Cucamonga County Water Dist. v. Southwest Water Co. (1971) 22 Cal. App. 3d 245, 257.) Plaintiff made no showing in his complaint to overcome the presumption of constitutionality of Education Code section 16651 et seq. and has failed to state a cause of action.

The demurrer was properly sustained; the judgment dismissing plaintiff's complaint is affirmed.

FOR THE COURT:

PUGLIA P.J.

FRIEDMAN J.

JANES J.

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING
San Francisco, California 94102
June 24, 1976

I have this day filed order HEARING DENIED
In re: Civ. No. 15458

Burgdorf

vs.

Bd. of Trustees of Woodland, etal.

Respectfully, G.E. BISHEL
Clerk

40748-877-3-76 3M OSP